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LEONG SANG

v.

DATO' CHU AH NGE, PRESIDEN KELAB DIRAJA SELANGOR

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HIGH COURT MALAYA, KUALA LUMPUR
AZIAH ALI J
[ORIGINATING SUMMONS NO: R1-24-44-2006]
14 JUNE 2010

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UNINCORPORATED ASSOCIATIONS: *Clubs - Membership - Expulsion of a member - Disciplinary proceeding - Whether Disciplinary Committee properly constituted - Whether inquorate - Whether expulsion ultra vires Rules of club*

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The plaintiff, a member of the Kelab Di Raja Selangor ('Club'), had been expelled from the Club after the Club's Election and Disciplinary Committee ('E&DC') found him guilty of seven counts of misconduct complained against him. Aggrieved, the plaintiff applied for a declaration that his expulsion was *ultra vires* the Club Rules and was null and void. Before the learned judge, the plaintiff argued that the E&DC that expelled him was inquorate and not properly constituted, as only four members, instead of the full five members, sat as the inquiry panel. It was further argued that the inquiry was flawed as no legal counsel or representation was accorded him or allowed by the panel. The defendant, the President of the Club, retorted that there is no provision requiring all five members of the E&DC to sit on any of its meetings, that the four-member sitting has complied with the Rules, and that, in any case, at common law, the minimum number for a quorum is just two. The issue that arose was whether sufficient cause has been shown for the court to interfere with the decision of the E&DC.

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Held (dismissing application):

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(1) The relationship between the plaintiff and the Club is contractual in nature and the plaintiff, by agreeing to be a member, is deemed to have accepted to be bound by the defendant's rules. (para 12)

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(2) The Club Rules differentiate between meetings which require a minimum number of quorum, such as r. 46, and meetings where the number of members to form a quorum is not specified. In the case of the E&DC, the Rules do not specify the quorum for a meeting of the E&DC. (para 13)

(3) In the absence of a provision in the Club Rules specifying the number of members of the E&DC to form a quorum, the general principle at common law applies and a quorum shall be formed with a majority of the members attending. In the present case, four of the five members of the E&DC conducted the inquiry on the seven complaints lodged against the plaintiff. The E&DC was thus not inquorate. (para 14)

(4) At the inquiry, the plaintiff was requested by the Inquiry Board to present his version of the events. Hence, the plaintiff was accorded the right to be heard. As for the right to legal representation, the Rules do not provide for it. Since the Rules are silent, the plaintiff therefore has no absolute right to be legally represented. (para 15)

(5) The plaintiff has failed to show why this court ought to interfere in the decision taken against him. As was said in *Darshan Singh v. Farid Kamal Hussain* "the questions raised are peculiarly within the province of a social club and the courts will not interfere even with unreasonable decisions provided that the committee, in arriving at the decision, has not acted dishonestly or in excess of jurisdiction". (para 18)

Case(s) referred to:

Ball v. Pearsall [1987] 10 NSWLR 700 ***(refd)***

Darshan Singh v. Farid Kamal Hussain [1997] 2 CLJ Supp 309 HC ***(refd)***

Dato' Hj Talaat Hj Husain v. Chak Kong Yin [2005] 5 CLJ 221 HC ***(refd)***

Datuk Hj Harun Hj Idris & Ors v. PP [1977] 1 LNS 24 ***(refd)***

Enderby Town Football Club Ltd v. The Football Association Ltd and another [1971] 1 All ER 215 ***(refd)***

Lim Yee Cheong v. Haji Mokty Datuk Mahmood & Ors [1984] 1 LNS 39 ***(refd)***

R v. Secretary of State for the Environment ex-parte Hillingdon [1986] 1 WLR 192 ***(refd)***

Tan Kah Wich & Ors v. Datuk Phua Cheng Leong & Ors [1979] 1 LNS 133 ***(refd)***

Tanjong Jaga Sdn Bhd v. Minister of Labour and Manpower & Anor [1987] 2 CLJ 119; [1987] CLJ (Rep) 368 SC ***(refd)***

Tharmalingam v. Sambanthan [1960] 1 LNS 143 ***(refd)***

A *For the plaintiff - Edmund Bon; M/s Chooi & Co*
For the defendant - Rishwant Singh; M/s Zul Rafique & Partners

Reported by Wan Sharif Wan Ahmad

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JUDGMENT

Aziah Ali J:

[1] The plaintiff was an ordinary member of the Royal Selangor
C Club ("the Club") of which the defendant was the President. By a letter dated 15 July 2004 the defendant informed the plaintiff of three complaints lodged against the plaintiff in respect of the plaintiff's conduct on 27 June 2004. By a letter dated 20 July 2004 the defendant informed the plaintiff of four more complaints
D lodged against him in respect of his conduct. The defendant suspended the plaintiff's membership. The defendant by letter dated 27 July 2004 informed the plaintiff that the Defendant's Election and Disciplinary Committee ("E & DC") would be holding an inquiry on the seven complaints. The plaintiff says that on the
E day of the inquiry and without proper notice, the E & DC proffered a further complaint against the plaintiff ("the 8th complaint"). The E & DC found the plaintiff guilty on the seven complaints. By a letter dated 3 September 2004 the defendant informed the plaintiff of its decision, and expelled the plaintiff with
F effect from 3 September 2004.

[2] By a letter dated 16 September 2004 the plaintiff lodged an appeal against the decision of the E & DC to the Defendant's General Committee ("the GC"). By letter dated 18 October 2004
G the GC informed the plaintiff that the GC had, at its meeting on 17 October 2004, rejected the plaintiff's appeal and confirmed the E & DC's decision.

[3] By way of this application the plaintiff seeks the following
H reliefs:

(a) a declaration that the decision of the E & DC by its letter dated 3 September 2004 is null and void;

(b) a declaration that the decision of the GC dated 7 October
I 2004 is null and void;

(c) a declaration that the expulsion of the plaintiff as a member of the defendant is null and void;

(d) damages; and

(e) an assessment of damages.

I dismissed the application with costs to be taxed unless agreed.

[4] The plaintiff claims that there has been a fundamental breach of the 'Constitutional Rules of the Royal Selangor Club' ("the Rules"). It is the plaintiff's case that the inquiry against him was not properly convened pursuant to the Rules, and any decision taken pursuant thereto by the E & DC must be declared null and void. The plaintiff relies on the following grounds:

(a) the E & DC was not properly constituted as its quorum was inquorate;

(b) no evidence that the 5th member of the E & DC who was absent was given notice of the inquiry;

(c) no evidence that the two members of the E & DC – P. Jayasingam and Allan Wong were properly appointed and were eligible to be appointed to the E & DC;

(d) the E & DC did not have regulations or bye-laws to govern disciplinary proceedings, in particular, the inquiry held on 26 August 2004.

Whether The E & DC Was Not Properly Constituted As Its Quorum Was Inquorate

[5] Counsel for the plaintiff submits that the E & DC was not properly constituted when it conducted the inquiry. On 26 August 2004 the members of the E & DC which conducted the inquiry were as follows:

(i) Dato' Charan Dass (Chairman),

(ii) Mr Andrew Bryan Perera,

(iii) Mr P. Jayasingam, and

(iv) Mr Raj Kumar Sharma.

A The plaintiff says there was a breach of r. 25(i) and (ii) read with r. 12(i). The membership of the E & DC is provided under r. 12(i) as follows:

> 12(i) The Election of Members shall be the responsibility of the Election and Disciplinary Committee which shall consist of a Chairman and two other members of the Club who, subject to vacancies, shall be elected at an Annual General Meeting of the Club and two members of the Club who shall be appointed from among those who are qualified to stand for election.

Rule 25(i) and (ii) provide as follows:

Disciplinary Committee

> 25(i) All disciplinary matters shall be the responsibility of the Election and Disciplinary Committee and subject to Rule 25(ii) their decision shall be final.
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> (ii) The Election and Disciplinary Committee may at any time suspend and may, after due notice and inquiry expel any member of the Club on the ground of any conduct in or out of the Club which in the opinion of the said Committee is injurious to the interests of the Club or renders him unfit to associate with members of the Club. Any member so expelled or suspended for a period in excess of six months shall have the right of appeal to the General Committee provided he lodges his appeal in writing with the Secretary within fourteen days of the said decision. Any member so expelled shall, in addition, have the right, with the support of at least fifty Ordinary Members in writing to require the General Committee to convene an Extraordinary General Meeting of the Club and the General Committee shall within fourteen days, of receipt of such requisition convene a meeting accordingly.

[6] It is submitted that r. 12(i) makes no provision for the quorum for the E & DC unlike r. 46 which provides for the quorum for meetings of the GC. It is submitted that there is no provision in the Rules to allow the E & DC to act by a quorum of less than five members. Based on the plaintiff's interpretation of rr. 12(i), 25(i) and 25(ii), it is submitted that where the rules or regulations are silent as to quorum, the common law rule applies and the E & DC must sit as a full quorum. Therefore it is submitted that the E & DC must at all time act as a full

committee with five members and any act or decision done or made without all its members is *ultra vires* and beyond the scope and authority of the committee.

[7] Counsel further submits that the body of members of the defendant has not empowered the E & DC to transact business by a quorum of less than five members. Had the defendant envisaged a quorum of less than five members for the E & DC to validly transact its business, this would have been provided for by the Rules. There was no agreement ("consensual compact") for a quorum of less than five members of the E & DC to transact its business of disciplining members (*Ball v. Pearsall* [1987] 10 NSWLR 700). The defendant's GC and/or E & DC had represented to its members that the E & DC always acted by a full committee of five members (refer to Line-Up of the Defendant's Committees in the Defendant's Annual Report & Accounts for 2004).

[8] Counsel for the plaintiff submits that on 26 August 2004 there was a quorum failure of the E & DC when only four members sat as the inquiry panel. Therefore the E & DC was not properly constituted. As the quorum was inquorate, the E & DC has acted without jurisdiction or in excess of it when it conducted the inquiry and its act on 26 August 2004 was unlawful and unconstitutional *vis-a vis* the Rules. Any decision reached is beyond the scope and authority of the E & DC and was therefore illegal, *ultra vires* the Rules and/or in excess of jurisdiction.

[9] For the defendant it is submitted that there is no provision requiring all five members of the E & DC to sit on any of its meeting and four members sitting is in line with the Rules. Counsel refers to *Ashton and Reid on Club Law* which states at p. 139 as follows:

> It is plain that the committee must be quorate when considering the issue of expulsion but it lends more weight to any decision if the relevant meeting is attended by a large majority of the committee. It is normal practice to require that a decision to expel a member must be carried by at least a two-thirds majority of the committee present at the meeting, and very often a three-quarters majority is preferred. The same voting majority should be used for any appellate process.

Counsel submits that at common law the minimum number for a quorum is two (*R v. Secretary of State for the Environment ex-parte Hillingdon* [1986] 1 WLR 192). In this case the decision was unanimous that the plaintiff was guilty.

[10] It is further submitted that the plaintiff did not raise the issue of quorum of the E & DC before the inquiry and on appeal to the GC. (exh. EX19). Nowhere in the plaintiff's letter did the plaintiff raise the issue that the E & DC was inquorate. Had this issue been raised the GC would have decided on it. Counsel further submits that the plaintiff has not exhausted his remedies under r. 25(ii) (*Dato' Hj Talaat bin Hj Husain v. Chak Kong Yin* [2005] 5 CLJ 221).

Decision

[11] The primary ground of the plaintiff's challenge to the validity of the E & DC inquiry which resulted in his expulsion from the Club is the alleged invalid sitting of the E & DC on 26 August 2004 arising out of lack of quorum.

[12] What is the nature of the relationship between a social club like the defendant and its members? "Membership of a club or association is primarily a matter of contract. Members make their payments and in return they become entitled to the benefits of membership in accordance with the Rules". (*Lim Yee Cheong v. Haji Mokty bin Datuk Mahmood & Ors* [1984] 1 LNS 39). In *Tharmalingam v. Sambanthan* [1960] 1 LNS 143 Ong J (as he then was) said:

> It is axiomatic that, in disputes between members of such an association, the rights of the plaintiff must depend on contract, because, by accepting membership of the association he contracted to be bound by its rules. Hence the material terms of their contract must be sought in the rules of the association.

In the later case of *Tan Kah Wich & Ors v. Datuk Phua Cheng Leong & Ors* [1979] 1 LNS 133; [1979] 2 MLJ 259, 260; Wan Suleiman FJ said:

> ... On pages 5 and 6 of the Sixth Edition of Shackelton on The Law and Practice of Meetings appears the following passage. "In the case of unincorporated associations such as clubs, trade unions, professional societies and the like, the rules as adopted between the members *inter se* are the source of the regulations to

> be applied in their members' meetings, and though such rules do not possess the force of law given to the rules of incorporated bodies by virtue of the incorporating statute, they are enforceable as terms of the implied contract involved in the fact of membership.

Based on the above authorities the relationship between the plaintiff and the Club is contractual and the plaintiff, by agreeing to be a member, is deemed to have accepted to be bound by the defendant's rules.

[13] It is clear that the Club Rules differentiate between meetings which require a minimum number of members to form a quorum, such as r. 46, and meetings where the number of members to form a quorum is not specified. In the case of the E & DC the Rules do not specify the quorum for a meeting of the E & DC. Counsel for the applicant submits that in the absence of such a provision, then there must be a full quorum of the E & DC for a decision of the E & DC to be valid.

[14] On the issue of quorum, the case of *Datuk Haji Harun bin Haji Idris & Ors v. Public Prosecutor* [1977] 1 LNS 24, though regarding a board of directors, is instructive. The Federal Court said *inter alia*:

> ... that the law is that where a board of directors had delegated its power to a committee without specifying the committee's quorum all acts of the committee must be done in the presence of all members of the committee, that if a special meeting of that committee had to be specially convened for a particular purpose every member of it ought to have had notice of and a summons to the meeting and that accordingly the omission to summon one member of the committee and the fact that the notice had not stated the object of the meeting with sufficient particularity vitiated the proceedings of that body.

Rule 12(i) shows that the Chairman and two other members of the E & DC shall be elected at an Annual General Meeting of the Club, and two members of the Club who shall be appointed from among those who are qualified to stand for election. Rule 25(i) provides amongst others that all disciplinary matters shall be the responsibility of the E & DC. Therefore under the Rules the powers relating to disciplinary matters of the Club is the sole

purview of the E & DC and is not delegated power. Therefore there is no requirement that all members of the E & DC must be present for a decision taken to be valid. Therefore the issue of whether the fifth member of the E & DC had been notified is irrelevant. I agree with counsel for the defendant that in the absence of a provision specifying the number of members of the E & DC to form a quorum, the general principle at common law applies and a quorum shall be formed with a majority of the members attending.

In the present case, four out of the five members of the E & DC conducted the inquiry on the seven complaints lodged against the plaintiff. Therefore the E & DC was not inquorate. It is also not disputed that though the plaintiff was informed of the eighth complaint, it was not considered in the inquiry. The plaintiff was found guilty of the seven charges.

[15] The notes of the inquiry (exh. B) show that at the inquiry, the plaintiff was requested by the inquiry board to present his version of events. Hence the plaintiff was accorded the right to be heard. In the case of *Tanjong Jaga Sdn Bhd v. Minister of Labour and Manpower & Anor.* [1987] 2 CLJ 119; [1987] CLJ (Rep) 368 at p. 371 the Supreme Court held "on the matter of natural justice and the right to a hearing, the fundamental proposition about the content of the *audi alteram partem* rule has been stated time and again: it is variable. The rules are not inflexible principles and may vary in their content in the circumstances of the case." Having perused the notes of the inquiry I find nothing to suggest that the plaintiff has not been accorded the right to a fair hearing. As to the right to legal representation, the Rules do not provide for it. Since the Rules are silent, the plaintiff therefore has no absolute right to be legally represented (*Enderby Town Football Club Ltd v. The Football Association Ltd and another* [1971] 1 All ER 215).

[16] The notes of inquiry do not show anything improper about the inquiry proceedings. Further I agree with counsel for the defendant that the plaintiff ought to have raised or challenged the appointment of the two members of the E & DC either at the inquiry or in his appeal to the GC. However no such challenge was raised whether at the inquiry or in the appeal. In any event the plaintiff has not shown any basis for this allegation. It is a bare assertion.

[17] On the issue of lack of regulations or bye-laws to govern disciplinary proceedings, to my mind the absence of rules would not render the proceedings and the decision of the E & DC invalid so long as the plaintiff was accorded an opportunity to be heard, which I find he was, in the present case. I find no evidence to suggest that the inquiry had not been conducted fairly or that the members had not acted in good faith.

[18] To what extent a court ought to interfere in the decision of a domestic tribunal was dealt with in the case of *Darshan Singh v. Farid Kamal Hussain* [1997] 2 CLJ Supp 309 wherein the court said *inter alia*:

> In the case of *Lee v. The Showmens Guild of Great Britain* [1952] 1 All ER 1175 CA on the issue as to what extent will the Courts examine the decision of domestic tribunal of social clubs on points of law, Lord Denning had this to say at p. 1181:
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> In the case of social clubs the rules usually empower the committee to expel a member who, in their opinion has been guilty of conduct detrimental to the club, and this is a matter of opinion and nothing else.
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> The Courts have no wish to sit on appeal from their decision on such a matter any more than from the decisions of a family conference.
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> They have nothing to do with social rights or social duties
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> On any expulsion they will see that there is fair play.
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> They will see that the man has notice of the charge and a reasonable opportunity of being heard.
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> They will see that the main committee observe the procedure laid down by the rules but will not otherwise interfere.
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> Further in the same case as regards what was called the "club cases" Lord Romer at p. 1185 had this to say:
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> First, by the rules in the club cases by which the members agreed to be bound, it was expressly provided that the test of expulsion was whether "in the opinion of" the domestic forum the conduct of a member warranted it, and secondly, the decision on which the intervention of the Courts was unsuccessfully sought were questions of ethics and not of law.

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> Such questions are peculiarly within the province of a social club and is now well established that the Courts will not interfere even with unreasonable decisions provided that the committee has not acted dishonestly, or in the excess of jurisdiction in arriving at them.

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Having considered the submissions by counsels and the authorities, I find that the plaintiff has failed to show why this court ought to interfere in the decision taken against the plaintiff. For the aforementioned reasons the application is dismissed with costs to be taxed unless agreed.

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